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Congressman Lee M. Zeldin

First Congressional District of New York

November 1, 2018

Dr. Cathy Cruise
Acting Director
Northport Veterans Affairs Medical Center
79 Middleville Road
Northport, NY 11768

Dear Dr. Cruise,

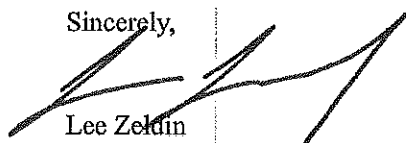
I write on behalf of my constituent and Northport VAMC patient Mrs. Cathie Doherty and other women veterans she advocates on behalf of. As local veterans, Mrs. Doherty and others should be able to rely on the Women's Clinic at Northport to receive the benefits they have earned as part of their military service and to come together as a part of a community that understands the hurdles faced by women in the military and the struggles experienced when transitioning back to civilian life.

As you know, women veterans are at a greater risk of experiencing Military Sexual Trauma (MST) and other marginalizing experiences most often encountered by women in the military, and when returning home they oftentimes find the existing services fail to meet their specific medical needs. Women veterans are the fastest growing population of veterans, and it is critical that the services provided to our service members adapt to this changing population.

Mrs. Doherty has expressed to my office that she been frustrated with the inaction of previous administrations in addressing her and other female veterans' concerns regarding women's services at the VA. In working with you and your administration as the new Acting Director of Northport, I have found you especially responsive to the concerns of the local veteran community and committed to taking action to best serve their needs.

Thank you for agreeing to meet with Mrs. Doherty and your willingness to hear her concerns and ideas on how to improve women's healthcare for our growing female veteran population. If you or your staff have any questions regarding this matter, please contact Cleveland Johnson at cleveland.johnson@mail.house.gov or by phone at (631)289-1548.

Sincerely,



Lee Zeldin
Member of Congress

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COMMITTEE ON FINANCIAL SERVICES

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Congressman Lee M. Zeldin
First Congressional District of New York

March 9, 2020

Asst. Secretary for Congressional and
Intergovernmental Affairs
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

To Whom It May Concern,

At the VA Medical Centers, significant numbers of women veterans have Post Traumatic Stress Disorder (PTSD) due to Military Sexual Trauma (MST) and are understandably anxious about receiving their gynecological healthcare from male providers. For many women veterans, the VA is their only source of healthcare. Consequently, many decide to forgo needed life-saving screenings and preventative care. While many VA Administrators are sympathetic to this issue, they are unable to do anything about it without the possibility of discriminating against qualified male gynecologists.

1. Are there any exceptions/waivers in federal labor law to allow for gender-specific hiring for the purposes of women's mental health issues?
2. Could a second provider be specifically hired as female if a qualified male provider was already on staff in order to give the women veterans the option to choose?

Thank you for your attention to this as we are trying to address a serious health concern existing in our community and probably others as well. Please address all correspondence for on this inquiry to my Congressional Aide, Cleveland Johnson, at 31 Oak Street, Suite 20, Patchogue, NY 11720. He can be reached at (631) 289-1097 or Cleveland.Johnson@mail.house.gov.

Sincerely,

Lee Zeldin
Member of Congress

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Congressman Lee M. Zeldin
First Congressional District of New York

March 16, 2020

Patricia Crawford
Director, Office of Communications and Legislative Affairs
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Dear Ms. Crawford,

At the VA Medical Centers, significant numbers of women veterans have Post Traumatic Stress Disorder (PTSD) due to Military Sexual Trauma (MST) and are understandably anxious about receiving their gynecological healthcare from male providers. For many women veterans, the VA is their only source of healthcare. Consequently, many decide to forgo needed life-saving screenings and preventative care. While many VA Administrators are sympathetic to this issue, they are unable to do anything about it without the possibility of discriminating against qualified male gynecologists.

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Thank you for your attention to this as we are trying to address a serious health concern existing in our community and probably others as well. Please address all correspondence for on this inquiry to my Congressional Aide, Cleveland Johnson, at 31 Oak Street, Suite 20, Patchogue, NY 11720. He can be reached at (631) 289-1097 or Cleveland.Johnson@mail.house.gov.

Sincerely,

Lee Zeldin
Member of Congress

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

April 23, 2020

The Honorable Lee M. Zeldin
U.S. House of Representatives
31 Oak Street, Suite 20
Patchogue, New York 11772

Dear Congressman Zeldin:

This is in response to your letter of March 16, 2020, regarding the provision of gynecological services by VA medical centers. You note that significant numbers of female veterans have posttraumatic stress disorder (PTSD) resulting from military sexual trauma (MST), and as a result, may be anxious about receiving treatment from a male gynecologist. You have asked whether there are exceptions to federal prohibitions against sex discrimination that would permit the VA to make gender-specific assignments for the purposes of female veterans' mental health issues and whether a VA medical center that already has a male gynecologist on its staff would be permitted to hire a female gynecologist because of her gender so that female veterans would have the option of choosing to receive care from a female gynecologist.

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, which covers employment discrimination based on race, color, sex, religion, or national origin. Under Title VII, sex discrimination is only lawful if sex constitutes a "bona fide occupational qualification [BFOQ] reasonably necessary to the normal operation of that particular business or enterprise." 42 U.S.C. § 2000e-2(e)(1). The BFOQ exception is an "extremely narrow exception to the general prohibition of discrimination" that is "valid only when the essence of the business operation would be undermined by not hiring members of one sex exclusively." *Gray v. Dep't of Veterans Affairs*, EEOC Appeal No. 0720050093 (2007) (quoting *Dothard v. Rawlinson*, 433 U.S. 321, 333 (1977)).

Courts have recognized that hiring members of a particular sex can be a BFOQ when necessary to provide therapeutic care and/or to protect bodily privacy. In particular, in *Healey v. Southwest Psychiatric Hospital*, 78 F.3d 128 (3d Cir. 1996), the court upheld a sex-based staffing policy for childcare specialists at a hospital for emotionally disturbed children and adolescents with intellectual disabilities, some of whom had been sexually abused. The defendant had presented expert testimony that staffing males and females on all shifts was necessary for "role modeling," including parental role modeling, since a male is better able than a female to serve as a male role model, and a female is a better able than a male to serve as a female role model. The balanced staff was also necessary because sexually abused children will more readily reveal their problems to a staff member of a particular sex, depending on their own sex and on the sex of the abuser. The court further concluded that the hospital's staffing policy was justified by privacy concerns since, among other things, adolescent patients will more freely discuss concerns related to hygiene, menstruation, and sexuality with staff members of the same sex. See also *Gray v. Dep't of Veterans Affairs*, EEOC Appeal No. 0720050093 (concluding that sex was a BFOQ for the urine screening collection function for health technicians, who were required to personally

The Honorable Lee M. Zeldin
Page Two

observe the urine specimen entering the specimen container and thereby view the clients' naked bodies, in order to ensure the privacy rights of clients and to ensure validity of the testing for which there was a therapeutic purpose).

Consistent with the case law, the kind of policy you have described in your letter related to the assignment of female gynecologists to female patients suffering from MST-induced PTSD might be permissible under Title VII's BFOQ exception. The EEOC, however, cannot make that determination outside the context of a formal investigation or other administrative proceeding.

We hope this information is helpful. Please note that this is an informal discussion of the issues you raised and does not constitute an official opinion of the EEOC.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Crawford". The signature is fluid and cursive, with a large, stylized "P" and "C".

Patricia Crawford
Director, Legislative Affairs

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Congressman Lee M. Zeldin

First Congressional District of New York

August 7, 2020

Antonio Sánchez, MD
Executive Director
Northport VA Medical Center
79 Middleville Road
Northport, NY 11768

Dear Dr. Sánchez,

Suffolk County is home to the largest population of veterans in New York State, and with female veterans representing the fastest-growing cohort of veterans, I have long fought to ensure our local female veterans have access to the resources and care they have earned at Northport Veterans Affairs Medical Center (VAMC).

Over the years, in working with local female veterans and ensuring Northport leadership heard their concerns, some of their suggestions and requests were adopted by the prior Northport administration. However, one of their main concerns that remains unaddressed is the availability of a female gynecologist, especially for those female veterans who are survivors of Military Sexual Trauma (MST). In echoing their calls, I urged the prior administration to address these concerns.

In my continued communications with these local female veterans, they relayed that the administration at Northport stated they were unable to hire a female gynecologist because of discrimination concerns about selecting an additional provider based on gender. Earlier this year, I inquired with the U.S. Department of Labor regarding the ability of Northport to hire based on gender in this case.

In its response, the Department of Labor detailed in some cases the hiring of a particular gender provider to meet patient needs, saying, "Courts have recognized that hiring members of a particular sex can be a BFOQ [bona fide occupational qualification] when necessary to provide therapeutic care and/or to protect bodily privacy." I urge you to work with the Department of Labor to receive official guidance on how to proceed in this specific case.

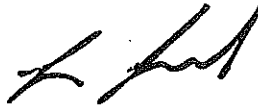
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With this additional information, including the cited legal precedents, I urge Northport to move forward with hiring a female gynecologist to treat the growing constituency of women veterans, and to provide a detailed response of the rationale should Northport elect not to proceed with this hiring.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Zeldin', written in a cursive style.

Lee Zeldin
Member of Congress

Enclosures (2):

3_9_2020 Zeldin to DOL re Gender Hiring

4_20_2020 DOL Responses re Gender Hiring



U.S. Department
of Veterans Affairs

NY/NJ VA Health Care Network
Northport VA Medical Center
79 Middleville Road | Northport, NY 11768
631-261-4400

www.northport.va.gov

8/19/2020

RECEIVED AUG 24 2020

The Honorable Lee M. Zeldin
31 Oak Street, Suite 20
Patchogue, NY 11772

RE: Congressional Inquiry for Gynecological Care at the Northport VAMC
Received August 7, 2020

Dear Congressman Zeldin:

The information included in this letter is being released to you in your official capacity and should be handled with appropriate sensitivity. This is in response to your inquiry sent on 8/7/20 on behalf of your constituent, regarding access to a female gynecologist as part of the care offered to veterans at the Northport VAMC.

We appreciate your support as we strive to improve the delivery and coordination of care for women Veterans in a timely, accessible, patient-centered manner, with dignity and with privacy. We also are open to innovative ideas to expand services for women Veterans. Our goal is to continue to provide access to high quality, patient-driven health care delivery for women veterans and enhance the women veterans experience.

The Northport VA Medical Center and VHA Central Office have been redefining how care is delivered to women veterans across Long Island, to ensure that every woman veteran has access to primary care, mental health care, specialty care, and reproductive health care to meet all needs. The satisfaction and trust survey scores related to the question "I trust Northport VAMC for my health care needs", specific to female veterans were 94% in fiscal year (FY) 2019 and remain in the 90%'s for the current FY to date. The satisfaction and trust scores related to the question regarding the patients' most recent VA health care experience, "I felt respected and comfortable" were 94% in FY19.

During fiscal year 2019 and during the current FY to date, the number of referrals requesting same gender gynecological provider has remained extremely very low. The Women's Health Program at the Northport VA Medical Center serves approximately 2,300 women veterans. One percent (1%) of our female veterans have been referred to the community-based gynecology care. Of the 1%, same gender gynecological provider consists of less than 0.17% in both FY19 and FY20 to date. Further, these veterans are typically seen by a provider in the community in less than 7 days, suggesting patients are seen timely when referred to the community.

The current gynecological clinic at the Northport VA Medical Center is staffed by a 0.8 full time employee (FTE). The utilization for this specific clinic for FY2019 was 57% with less than a 2-day estimated wait. Please note FY2019 was used as a metric based on COVID restrictions in FY20. Based on this utilization

information, clinical demand, and the ability to provide the services in the community, the Northport VA Medical Center cannot justify adding additional staff to perform gynecological services.

With regards to hiring a practitioner based on gender, I requested guidance from the Human Resources Office, and they stated that the Veterans Health Administration (VHA), as an organization, strictly prohibits this practice under 5 USC 2302 Prohibited Personnel Practice and Civil Rights Act of 1964.

If the congressional office has quantifiable data of any special need from female veterans, the Northport VAMC would be willing to evaluate the data and perform service recovery to any veteran who is not getting the best possible care Northport can offer, whether it is in the Northport Women's Clinic or through referral to the community.

We at the Northport VAMC are dedicated to the care and wellbeing of women veterans, and we will continue to do our utmost to meet their medical needs. If you have any further questions or concerns regarding this issue, please contact Edward Savarese, Executive Assistant to the Medical Center Director. He can be reached at (631) 261-4400 X2749.

Sincerely,

ANTONIO SANCHEZ 244921 Digitally signed by ANTONIO SANCHEZ 244921
Date: 2020.08.19 16:03:19 -0400

ANTONIO SANCHEZ, MD, MHSA, FAPA, FACHE
Executive Director

COMMITTEE ON FINANCIAL SERVICES

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Congressman Lee M. Zeldin *First Congressional District of New York*

December 9, 2021

Dr. Antonio Sanchez
Executive Director
Northport VA Medical Center
79 Middleville Road
Northport, New York 11768

Dear Dr. Sanchez,

I write today to once again urge the Northport Veterans Affairs Medical Center (VAMC) to hire a female obstetrician/gynecologist (OB/GYN) immediately. As you know, my office has been in contact with the Northport VAMC for nearly four years strongly advocating for a female OB/GYN on behalf of women veterans in New York's First Congressional District and elsewhere on Long Island who are served by Northport VAMC.

Over the past several years, I have heard from countless women veterans from New York's First Congressional District who have expressed dismay at Northport VAMC's inability to hire a female OB/GYN. Women are the fastest growing demographic among veterans in the United States. According to a June 2020 Census Report, 1.7 million women account for 9% of the veteran population, and that number is expected to rise to 17% by 2040.¹ Unfortunately, according to the VA, 1 in 3 women veterans tell their VA healthcare provider they experienced sexual harassment or assault while in the military. It is completely normal and warranted for these women to request a female OB/GYN.²

I appreciate Northport VAMC's flexibility in offering to send any woman into the community who wishes to see a female for OB/GYN care; however, we can and must do better to ensure that our women veterans are openly embraced by VA's community. On VA's website, under its "Office of Resolution Management, Diversity, and Inclusion" section, the VA states, "...equality for and inclusion of both employees and the Veterans they serve are of utmost importance..."³ These women veterans want to be a part of the VA community, and providing them access to a female OB/GYN on the Northport VAMC campus would be a wonderful demonstration of our appreciation of their sacrifices to our nation.

¹ <https://www.census.gov/newsroom/press-releases/2020/veterans-report.html>

² <https://www.womenshealth.va.gov/trauma.asp>

³ <https://www.va.gov/ORMDI/DiversityInclusion/FWP.asp>

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Our women veterans have dedicated so much to keep our exceptional nation safe, secure, and free. It is critical that we now provide those women with the best possible care, while embracing them more into the VA's community. Again, I strongly urge the Northport VAMC to hire a female OB/GYN immediately. Thank you for your important work on behalf of our nation's veterans, and I look forward to continuing our work together to ensure our veterans receive the best possible care.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Zeldin', written over a horizontal line.

Lee Zeldin
Member of Congress